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18
19 UNITED STATES DISTRICT COURT
20 FOR THE NORTHERN DISTRICT OF CALIFORNIA
21 SAN JOSE DIVISION

22 ELENA DEL CAMPO, et al., 23 24 vs. 25 DON R. MEALING, et al., 26 27 Defendants.	28 CIV. NO. 01-21151 JW PVT CIV. NO. 03-02661 JW PVT CLASS ACTION STIPULATED PROTECTIVE ORDER
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29 1. **PURPOSES AND LIMITATIONS**

30 Disclosure and discovery activity in this action are likely to involve production of
31 confidential, proprietary, or private information for which special protection from public
32 disclosure and from use for any purpose other than prosecuting this litigation would be
33 warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the
34 following Protective Order. The parties acknowledge that this Order does not confer blanket
35 protections on all disclosures or responses to discovery and that the protection it affords
36

1 extends only to the limited information or items that are entitled under the applicable legal
2 principles to treatment as confidential. The parties further acknowledge, as set forth in
3 Section 10, below, that this Stipulated Protective Order creates no entitlement to file
4 confidential information under seal; **Civil Local Rule 79-5** sets forth the procedures that must
5 be followed and reflects the standards that will be applied when a party seeks permission
6 from the court to file material under seal.

7 **2. DEFINITIONS**

8 2.1 Party: any party to this action, including all of its officers, directors,
9 employees, consultants, retained experts, and outside counsel (and their support staff).

10 2.2 Disclosure or Discovery Material: all items or information, regardless of
11 the medium or manner generated, stored, or maintained (including, among other things,
12 testimony, transcripts, or tangible things) that are produced or generated in disclosures or
13 responses to discovery in this matter.

14 2.3 “Confidential” Information or Items: information (regardless of how
15 generated, stored or maintained) or tangible things that qualify for protection under standards
16 developed under **F.R.Civ.P.26(c)**.

17 2.4 “Confidential – Attorneys ‘Eyes Only’” Information or Items: extremely
18 sensitive “Confidential Information or Items” whose disclosure to another Party or non-party
19 would create a substantial risk of serious injury that could not be avoided by less restrictive
20 means.

21 2.5 Receiving Party: a Party that receives Disclosure or Discovery Material
22 from a Producing Party.

23 2.6 Producing Party: a Party or non-party that produces Disclosure or
24 Discovery Material in this action.

25 2.7 Designating Party: a Party or non-party that designates information or
26 items that it produces in disclosures or in responses to discovery as “Confidential” or
27 “Confidential – Attorneys’ Eyes Only.”

28 2.8 Protected Material: any Disclosure or Discovery Material that is

1 designated as "Confidential" or as "Confidential – Attorneys' Eyes Only."

2 2.9 Outside Counsel: attorneys who are not employees of a Party but who
3 are retained to represent or advise a Party in this action.

4 2.10 House Counsel: attorneys who are employees of a Party.

5 2.11 Counsel (without qualifier): Outside Counsel and House Counsel (as
6 well as their support staffs).

7 2.12 Expert: a person with specialized knowledge or experience in a matter
8 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
9 expert witness or as a consultant in this action and who is not a past or a current employee of
10 a Party or of a competitor of a Party and who, at the time of retention, is not anticipated to
11 become an employee of a Party or a competitor of a Party. This definition includes a
12 professional jury or trial consultant retained in connection with this litigation.

13 2.13 Professional Vendors: persons or entities that provide litigation support
14 services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations;
15 organizing, storing, retrieving data in any form or medium; etc.) and their employees and
16 subcontractors.

17 **3. SCOPE**

18 The protections conferred by this Order cover not only Protected Material (as defined
19 above), but also any information copied or extracted therefrom, as well as all copies,
20 excerpts, summaries, or compilation thereof, plus testimony, conversations, or presentations
21 by parties or counsel to or in court or in other setting that might reveal Protected Material.

22 **4. DURATION**

23 Even after the termination of this litigation, the confidentiality obligations imposed by
24 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a
25 court order otherwise directs.

26 **5. DESIGNATING PROTECTED MATERIAL**

27 **5.1 Exercise of Restraint and Care in Designating Material for Protection.**

28 Each Party or non-party that designates information or items for protection under this Order

1 must take care to limit any such designation to specific material that qualifies under the
2 appropriate standards. A Designating Party must take care to designate for protection only
3 those parts of material, documents, items, or oral or written communications that qualify – so
4 that other portions of the material, documents, items, or communications for which protection
5 is not warranted are not swept unjustifiably within the ambit of this Order.

6 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
7 shown to be clearly unjustified, or that have been made for an improper purpose (e.g., to
8 unnecessarily encumber or retard the case development process, or to impose unnecessary
9 expenses and burdens on other parties), expose the Designating Party to possible sanctions.

10 If it comes to a Party's or a non-party's attention that information or items that it
11 designated for protection do not qualify for protection at all, or do not qualify for the level of
12 protection initially asserted, that Party or non-party must promptly notify all other parties that it
13 is withdrawing the mistaken designation.

14 5.2 Manner and Timing of Designation. Except as otherwise provided in this
15 Order (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or
16 ordered, material that qualifies for protection under this Order must be clearly so designated
17 before the material is disclosed or produced.

18 Designation in conformity with this Order requires:

19 (a) for information in documentary form (apart from transcripts of
20 depositions or other pretrial or trial proceedings), that the Producing Party affix the legend
21 "CONFIDENTIAL" or "CONFIDENTIAL – ATTORNEYS' EYES ONLY" at the top of each page
22 that contains protected material. If only a portion or portions of the material on a page
23 qualifies for protection, the Producing Party also must clearly identify the protected portion(s)
24 (e.g., by making appropriate markings in the margins) and must specify, for each portion, the
25 level of protection being asserted (either "CONFIDENTIAL" or "CONFIDENTIAL –
26 ATTORNEYS' EYES ONLY").

27 A Party or non-party that makes original documents or materials available for
28 inspection need not designate them for protection until after the inspecting Party has

1 indicated which material it would like copied and produced. During the inspection and before
2 the designation, all of the material made available for inspection shall be deemed
3 "CONFIDENTIAL – ATTORNEYS' EYES ONLY." After the inspecting Party has identified the
4 documents it wants copied and produced, the Producing Party must determine which
5 documents, or portions thereof, qualify for protection under this Order, then, before producing
6 the specified documents, the Producing Party must affix the appropriate legend
7 ("CONFIDENTIAL" or "CONFIDENTIAL – ATTORNEYS' EYES ONLY") at the top of each
8 page that contains Protected Material. If only a portion or portions of the material on a page
9 qualifies for protection, the Producing Party also must clearly identify the protected portion(s)
10 (e.g., by making appropriate markings in the margins) and must specify, for each portion, the
11 level of protection being asserted (either "CONFIDENTIAL" or "CONFIDENTIAL –
12 ATTORNEYS' EYES ONLY").

13 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
14 Party or nonparty offering or sponsoring the testimony identify on the record, before the close
15 of the deposition, hearing, or other proceeding, all protected testimony, and further specify
16 any portions of the testimony that qualify as "CONFIDENTIAL – ATTORNEYS' EYES ONLY."
17 When it is impractical to identify separately each portion of testimony that is entitled to
18 protection, and when it appears that substantial portions of the testimony may qualify for
19 protection, the Party or non-party that sponsors, offers, or gives the testimony may invoke on
20 the record (before the deposition or proceeding is concluded) a right to have up to 20 days to
21 identify the specific portions of the testimony as to which protection is sought and to specify
22 the level of protection being asserted ("CONFIDENTIAL" or "CONFIDENTIAL –
23 ATTORNEYS' EYES ONLY"). Only those portions of the testimony that are appropriately
24 designated for protection within the 20 days shall be covered by the provisions of this
25 Stipulated Protective Order.

26 (c) for information produced in some form other than documentary,
27 and for any other tangible items, that the Producing Party affix in a prominent place on the
28 exterior of the container or containers in which the information or item is stored the legend

1 "CONFIDENTIAL" or "CONFIDENTIAL – ATTORNEYS' EYES ONLY." If only portions of the
 2 information or item warrant protection, the Producing Party, to the extent practicable, shall
 3 identify the protected portions, specifying whether they qualify as "Confidential" or as
 4 "Confidential – Attorneys' Eyes Only."

5 5.3 Inadvertent Failures to Designate: If timely corrected, an
 6 inadvertent failure to designate qualified information or items as "Confidential" or "Confidential
 7 – Attorneys' Eyes Only" does not, standing alone, waive the Designating Party's right to
 8 secure protection under this Order for such material. If material is appropriately designated
 9 as "Confidential" or "Confidential – Attorneys' Eyes Only" after the material was initially
 10 produced, the Receiving Party, on timely notification of the designation, must make
 11 reasonable efforts to assure that the material is treated in accordance with the provisions of
 12 this Order.

13 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

14 6.1 Timing of Challenges. Unless a prompt challenge to a Designating
 15 Party's confidentiality designation is necessary to avoid foreseeable substantial unfairness,
 16 unnecessary economic burdens, or a later significant disruption or delay of the litigation, a
 17 Party does not waive its right to challenge a confidentiality designation by electing not to
 18 mount a challenge promptly after the original designation is disclosed.

19 6.2 Meet and Confer. A Party that elects to initiate a challenge to a
 20 Designating Party's confidentiality designation must do so in good faith and must begin the
 21 process by conferring directly (in voice to voice dialogue; other forms of communication are
 22 not sufficient) with counsel for the Designating Party. In conferring, the challenging Party
 23 must explain the basis for its belief that the confidentiality designation was not proper and
 24 must give the Designating Party an opportunity to review the designated material, to
 25 reconsider the circumstances, and, if no change in designation is offered, to explain the basis
 26 for the chosen designation. A challenging Party may proceed to the next stage of the
 27 challenge process only if it has engaged in this meet and confer process first.

28 6.3 Judicial Intervention. A Party that elects to press a challenge to a

1 confidentiality designation after considering the justification offered by the Designating Party
2 may file and serve a motion under **Civil Local Rule 7** (and in compliance with **Civil Local**
3 **Rule 79-5**, if applicable) that identifies the challenged material and sets forth in detail the
4 basis for the challenge. Each such motion must be accompanied by a competent declaration
5 that affirms that the movant has complied with the meet and confer requirements imposed in
6 the preceding paragraph and that sets forth with specificity the justification for the
7 confidentiality designation that was given by the Designating Party in the meet and confer
8 dialogue.

9 The burden of persuasion in any such challenge proceeding shall be on the
10 Designating Party. Until the court rules on the challenge, all parties shall continue to afford
11 the material in question the level of protection to which it is entitled under the Producing
12 Party's designation.

13 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

14 **7.1 Basic Principles.** A Receiving Party may use Protected Material that is
15 disclosed or produced by another Party or by a non-party in connection with this case only for
16 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be
17 disclosed only to the categories of persons and under the conditions described in this Order.
18 When the litigation has been terminated, a Receiving Party must comply with the provisions
19 of section 11, below (FINAL DISPOSITION).

20 Protected Material must be stored and maintained by a Receiving Party at a location
21 and in a secure manner that ensures that access is limited to the persons authorized under
22 this Order.

23 **7.2 Disclosure of "CONFIDENTIAL" Information or Items.** Unless otherwise
24 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
25 disclose any information or item designated CONFIDENTIAL only to:

26 (a) the Receiving Party's Outside Counsel of record in this action, as
27 well as employees of said Counsel to whom it is reasonably necessary to disclose the
28 information for this litigation and who have signed the "Agreement to Be Bound by Protective

1 Order" that is attached hereto as Exhibit A;

2 (b) the officers, directors, and employees (including House Counsel)
3 of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who
4 have signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

5 (c) experts (as defined in this Order) of the Receiving Party to whom
6 disclosure is reasonably necessary for this litigation and who have signed the "Agreement to
7 Be Bound by Protective Order" (Exhibit A);

8 (d) the Court and its personnel;

9 (e) court reporters, their staffs, and professional vendors to whom
10 disclosure is reasonably necessary for this litigation and who have signed the "Agreement to
11 Be Bound by Protective Order" (Exhibit A);

12 (f) during their depositions, witnesses in the action to whom
13 disclosure is reasonably necessary for this litigation and who have signed the "Agreement to
14 Be Bound by Protective Order" (Exhibit A). Pages of transcribed deposition testimony or
15 exhibits to depositions that reveal Protected Material must be separately bound by the court
16 reporter and may not be disclosed to anyone except as permitted under this Stipulated
17 Protective Order.

18 (g) the author of the document or the original source of the
19 information.

20 **7.3 Disclosure of "CONFIDENTIAL – ATTORNEYS' EYES ONLY"**
21 Information or Items. Unless otherwise ordered by the court or permitted in writing by the
22 Designating Party, a Receiving Party may disclose any information or item designated
23 "CONFIDENTIAL – ATTORNEYS' EYES ONLY" only to:

24 (a) the Receiving Party's Outside Counsel of record in this action, as
25 well as employees of said Counsel to whom it is reasonably necessary to disclose the
information for this litigation and who have signed the "Agreement to Be Bound by Protective
Order" that is attached hereto as Exhibit A;

28 (b) Experts (as defined in this Order) (1) to whom disclosure is

1 reasonably necessary for this litigation, (2) who have signed the "Agreement to Be Bound by
2 Protective Order" (Exhibit A);

3 (c) the Court and its personnel;

4 (d) court reporters, their staffs, and professional vendors to whom
5 disclosure is reasonably necessary for this litigation and who have signed the "Agreement to
6 Be Bound by Protective Order" (Exhibit A); and

7 (e) the author of the document or the original source of the
8 information.

9 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
10 **OTHER LITIGATION.**

11 If a Receiving Party is served with a subpoena or an order issued in other litigation that
12 would compel disclosure of any information or items designated in this action as
13 "CONFIDENTIAL" or "CONFIDENTIAL – ATTORNEYS' EYES ONLY," the Receiving Party
14 must so notify the Designating Party, in writing (by fax, if possible) immediately and in no
15 event more than three court days after receiving the subpoena or order. Such notification
16 must include a copy of the subpoena or court order.

17 The Receiving Party also must immediately inform in writing the Party who caused the
18 subpoena or order to issue in the other litigation that some or all the material covered by the
19 subpoena or order is the subject of this Protective Order. In addition, the Receiving Party
20 must deliver a copy of this Stipulated Protective Order promptly to the Party in the other
21 action that caused the subpoena or order to issue.

22 The purpose of imposing these duties is to alert the interested parties to the existence
23 of this Protective Order and to afford the Designating Party in this case an opportunity to try
24 to protect its confidentiality interests in the court from which the subpoena or order issued.
25 The Designating Party shall bear the burdens and the expenses of seeking protection in that
26 court of its confidential material – and nothing in these provisions should be construed as
27 authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from
28 another court.

1 **9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

2 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
3 Protected Material to any person or in any circumstance not authorized under this Stipulated
4 Protective Order, the Receiving Party must immediately (a) notify in writing the Designating
5 Party of the unauthorized disclosures, (b) use its best efforts to retrieve all copies of the
6 Protected Material, (c) inform the person or persons to whom unauthorized disclosures were
7 made of all the terms of this Order, and (d) request such person or persons to execute the
8 "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

9 **10. FILING PROTECTED MATERIAL.**

10 Without written permission from the Designating Party or a court order secured after
11 appropriate notice to all interested persons, a Party may not file in the public record in this
12 action any Protected Material. A Party that seeks to file under seal any Protected Material
13 must comply with **Civil Local Rule 79-5**.

14 **11. FINAL DISPOSITION.**

15 Unless otherwise ordered or agreed in writing by the Producing Party, within sixty days
16 after the final termination of this action, each Receiving Party must return all Protected
17 Material to the Producing Party. As used in this subdivision, "all Protected Material" includes
18 all copies, abstracts, compilations, summaries or any other form of reproducing or capturing
19 any of the Protected Material. With permission in writing from the Designating Party, the
20 Receiving Party may destroy some or all of the Protected Material instead of returning it.
21 Whether the Protected Material is returned or destroyed, the Receiving Party must submit a
22 written certification to the Producing Party (and, if not the same person or entity, to the
23 Designating Party) by the sixty day deadline that identifies (by category, where appropriate)
24 all the Protected Material that was returned or destroyed and that affirms that the Receiving
25 Party has not retained any copies, abstracts, compilations, summaries or other forms of
26 reproducing or capturing any of the Protected Material. Notwithstanding this provision,
27 Counsel are entitled to retain an archival copy of all pleadings, motion papers, transcripts,
28 legal memoranda, correspondence or attorney work product, even if such materials contain

Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION), above.

12. MISCELLANEOUS.

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order, no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

SO STIPULATED.

DATED: December 15, 2006

JENKINS GOODMAN NEUMAN & HAMILTON
LLP

By Charles D. Jenkins
CHARLES D. JENKINS
Attorneys for Defendants
AMERICAN CORRECTIVE COUNSELING
SERVICES, INC. and GEORGE KENNEDY

DATED: December 15, 2006

LAW OFFICES OF PAUL ARONS

By Paul Arons
PAUL ARONS
Attorneys for Plaintiffs

1 DATED: December 15, 2006

ROSS, DIXON & BELL LLP

2
3 By Timothy P. Irving

4 TIMOTHY P. IRVING

5 Attorneys for Defendants Don Mealing,
Lynn Hasney, Fundamental
6 Performance Strategies, Fulfillment
Unlimited, Inc. Fundamentals and
7 ACCS Administration, Inc.

8 **GOOD CAUSE EXISTING, IT IS SO ORDERED.**

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10 DATED: December 22, 2006



11 Hon. Patricia V. Trumbull
12 United States Magistrate Judge

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of

[print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Protective Order that was issued by the United States District Court for the Northern District of California on [] in del Campo v. American Corrective Counseling Services, Inc., Civ. No. 01-21151. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name]
of _____ [print or type full address and
telephone number] as my California agent for service of process in connection with this action
or any proceedings related to enforcement of this Stipulated Protective Order.

Date:

City and State where sworn and signed: _____

Printed name: _____
[printed name]

Signature: